

AMENDED IN ASSEMBLY MARCH 23, 2000

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 2047

Introduced by Assembly Member Steinberg
(Coauthors: Assembly Members Aroner, Firebaugh, Keeley,
Kuehl, Mazzoni, and Romero)
(Coauthors: Senators Speier and Vasconcellos)

February 18, 2000

An act to amend Section 299.5 of the Family Code, and to amend Sections 6401 ~~and 6402~~, 6402, 8461, 8462, 8463, and 8465 of, and to add Section 37 to, the Probate Code, relating to intestate succession.

LEGISLATIVE COUNSEL'S DIGEST

AB 2047, as amended, Steinberg. Intestate succession: domestic partners.

Under the existing law of intestate succession, the surviving spouse is entitled to a specified share of the decedent's separate property that is not effectively disposed of by will. *Existing law also provides that the surviving spouse is entitled to be appointed administrator of the decedent's estate and shall be given priority over other persons in relation to the decedent, as specified.*

This bill would extend ~~that entitlement~~ *these entitlements* to a decedent's domestic partner, as defined.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 299.5 of the Family Code is
2 amended to read:

3 299.5. (a) The obligations that two people have to
4 each other as a result of creating a domestic partnership
5 are those described in Section 297. Registration as a
6 domestic partner under this division shall not be evidence
7 of, or establish, any rights existing under law other than
8 those expressly provided to domestic partners in this
9 division, Section 1261 of the Health and Safety Code, and
10 Section 6401 of the Probate Code.

11 The provisions relating to domestic partners provided
12 in this division, Section 1261 of the Health and Safety
13 Code, and Section 6401 of the Probate Code shall not
14 diminish any right under any other provision of law.

15 (b) Upon the termination of a domestic partnership,
16 the partners, from that time forward, shall incur none of
17 the obligations to each other as domestic partners that are
18 created by this division and Section 1261 of the Health and
19 Safety Code.

20 (c) The filing of a Declaration of Domestic
21 Partnership pursuant to this division shall not change the
22 character of property, real or personal, or any interest in
23 any real or personal property owned by either domestic
24 partner or both of them prior to the date of filing of the
25 declaration.

26 (d) The filing of a Declaration of Domestic
27 Partnership pursuant to this division shall not, in and of
28 itself, create any interest in, or rights to, any property,
29 real or personal, owned by one partner in the other
30 partner, including, but not limited to, rights similar to
31 community property or quasi-community property.

32 (e) Any property or interest acquired by the partners
33 during the domestic partnership where title is shared
34 shall be held by the partners in proportion of interest
35 assigned to each partner at the time the property or
36 interest was acquired unless otherwise expressly agreed
37 in writing by both parties. Upon termination of the



1 domestic partnership, this subdivision shall govern the
2 division of any property jointly acquired by the partners.

3 (f) The formation of a domestic partnership under this
4 division shall not change the individual income or estate
5 tax liability of each domestic partner prior to and during
6 the partnership, unless otherwise provided under
7 another state or federal law or regulation.

8 SEC. 2. Section 37 is added to the Probate Code, to
9 read:

10 37. “Domestic partner” means one of two persons
11 who have filed a Declaration of Domestic Partnership
12 with the Secretary of State pursuant to Division 2.5
13 (commencing with Section 297) of the Family Code,
14 provided that the domestic partnership has not been
15 terminated pursuant to Section 299 of the Family Code.

16 SEC. 3. Section 6401 of the Probate Code is amended
17 to read:

18 6401. (a) As to community property, the intestate
19 share of the surviving spouse is the one-half of the
20 community property that belongs to the decedent under
21 Section 100.

22 (b) As to quasi-community property, the intestate
23 share of the surviving spouse is the one-half of the
24 quasi-community property that belongs to the decedent
25 under Section 101.

26 (c) As to separate property, the intestate share of the
27 surviving spouse or domestic partner is as follows:

28 (1) The entire intestate estate if the decedent did not
29 leave any surviving issue, parent, brother, sister, or issue
30 of a deceased brother or sister.

31 (2) One-half of the intestate estate in the following
32 cases:

33 (A) Where the decedent leaves only one child or the
34 issue of one deceased child.

35 (B) Where the decedent leaves no issue but leaves a
36 parent or parents or their issue or the issue of either of
37 them.

38 (3) One-third of the intestate estate in the following
39 cases:

40 (A) Where the decedent leaves more than one child.

1 (B) Where the decedent leaves one child and the issue
2 of one or more deceased children.

3 (C) Where the decedent leaves issue of two or more
4 deceased children.

5 SEC. 4. Section 6402 of the Probate Code is amended
6 to read:

7 6402. Except as provided in Section 6402.5, the part of
8 the intestate estate not passing to the surviving spouse or
9 domestic partner under Section 6401, or the entire
10 intestate estate if there is no surviving spouse or domestic
11 partner, passes as follows:

12 (a) To the issue of the decedent, the issue taking
13 equally if they are all of the same degree of kinship to the
14 decedent, but if of unequal degree those of more remote
15 degree take in the manner provided in Section 240.

16 (b) If there is no surviving issue, to the decedent's
17 parent or parents equally.

18 (c) If there is no surviving issue or parent, to the issue
19 of the parents or either of them, the issue taking equally
20 if they are all of the same degree of kinship to the
21 decedent, but if of unequal degree those of more remote
22 degree take in the manner provided in Section 240.

23 (d) If there is no surviving issue, parent or issue of a
24 parent, but the decedent is survived by one or more
25 grandparents or issue of grandparents, to the
26 grandparent or grandparents equally, or to the issue of
27 those grandparents if there is no surviving grandparent,
28 the issue taking equally if they are all of the same degree
29 of kinship to the decedent, but if of unequal degree those
30 of more remote degree take in the manner provided in
31 Section 240.

32 (e) If there is no surviving issue, parent or issue of a
33 parent, grandparent or issue of a grandparent, but the
34 decedent is survived by the issue of a predeceased spouse,
35 to that issue, the issue taking equally if they are all of the
36 same degree of kinship to the predeceased spouse, but if
37 of unequal degree those of more remote degree take in
38 the manner provided in Section 240.

39 (f) If there is no surviving issue, parent or issue of a
40 parent, grandparent or issue of a grandparent, or issue of



1 a predeceased spouse, but the decedent is survived by
2 next of kin, to the next of kin in equal degree, but where
3 there are two or more collateral kindred in equal degree
4 who claim through different ancestors, those who claim
5 through the nearest ancestor are preferred to those
6 claiming through an ancestor more remote.

7 (g) If there is no surviving next of kin of the decedent
8 and no surviving issue of a predeceased spouse of the
9 decedent, but the decedent is survived by the parents of
10 a predeceased spouse or the issue of those parents, to the
11 parent or parents equally, or to the issue of those parents
12 if both are deceased, the issue taking equally if they are
13 all of the same degree of kinship to the predeceased
14 spouse, but if of unequal degree those of more remote
15 degree take in the manner provided in Section 240.

16 *SEC. 5. Section 8461 of the Probate Code is amended*
17 *to read:*

18 8461. Subject to the provisions of this article, a person
19 in the following relation to the decedent is entitled to
20 appointment as administrator in the following order of
21 priority:

22 (a) Surviving spouse or domestic partner as defined in
23 Section 37.

24 (b) Children.

25 (c) Grandchildren.

26 (d) Other issue.

27 (e) Parents.

28 (f) Brothers and sisters.

29 (g) Issue of brothers and sisters.

30 (h) Grandparents.

31 (i) Issue of grandparents.

32 (j) Children of a predeceased spouse.

33 (k) Other issue of a predeceased spouse.

34 (l) Other next of kin.

35 (m) Parents of a predeceased spouse.

36 (n) Issue of parents of a predeceased spouse.

37 (o) Conservator or guardian of the estate acting in that
38 capacity at the time of death who has filed a first account
39 and is not acting as conservator or guardian for any other
40 person.

1 (p) Public administrator.

2 (q) Creditors.

3 (r) Any other person.

4 *SEC. 6. Section 8462 of the Probate Code is amended*
5 *to read:*

6 8462. The surviving spouse *or domestic partner* of the
7 decedent, a relative of the decedent, or a relative of a
8 predeceased spouse *or domestic partner* of the decedent,
9 has priority under Section 8461 only if one of the following
10 conditions is satisfied:

11 (a) The surviving spouse, *domestic partner*, or
12 relative is entitled to succeed to all or part of the estate.

13 (b) The surviving spouse, *domestic partner*, or
14 relative either takes under the will of, or is entitled to
15 succeed to all or part of the estate of, another deceased
16 person who is entitled to succeed to all or part of the
17 estate of the decedent.

18 *SEC. 7. Section 8463 of the Probate Code is amended*
19 *to read:*

20 8463. (a) If the surviving spouse is a party to an action
21 for separate maintenance, annulment, or dissolution of
22 the marriage of the decedent and the surviving spouse,
23 and was living apart from the decedent on the date of the
24 decedent's death, the surviving spouse has priority next
25 after brothers and sisters and not the priority prescribed
26 in Section 8461.

27 (b) *If the decedent is survived by a domestic partner,*
28 *who was living apart from the decedent on the date of the*
29 *decedent's death, to whom the decedent sent by certified*
30 *mail a written notice of termination of the domestic*
31 *partnership pursuant to paragraph (1) of subdivision (a)*
32 *of Section 299 of the Family Code, and the decedent failed*
33 *to file a Notice of Termination of Domestic Partnership*
34 *with the Secretary of State as required by subdivision (b)*
35 *of Section 299 of the Family Code, the surviving domestic*
36 *partner has priority next after brothers and sisters and not*
37 *the priority prescribed in Section 8461.*

38 *SEC. 8. Section 8465 of the Probate Code is amended*
39 *to read:*

1 8465. (a) The court may appoint as administrator a
2 person nominated by a person otherwise entitled to
3 appointment or by the guardian or conservator of the
4 estate of a person otherwise entitled to appointment. The
5 nomination shall be made in writing and filed with the
6 court.

7 (b) If a person making a nomination for appointment
8 of an administrator is the surviving spouse *or domestic*
9 *partner*, child, grandchild, other issue, parent, brother or
10 sister, or grandparent of the decedent, the nominee has
11 priority next after those in the class of the person making
12 the nomination.

13 (c) If a person making a nomination for appointment
14 of an administrator is other than a person described in
15 subdivision (b), the court in its discretion may appoint
16 either the nominee or a person of a class lower in priority
17 to that of the person making the nomination, but other
18 persons of the class of the person making the nomination
19 have priority over the nominee.

